

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FAYSAL A. JAMA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. 2:20-cv-00652-MJP

STIPULATED ORDER UNDER FED. R.
EVID. 502(d)

1. Pursuant to the agreement of the Parties under Fed. R. Evid. 502(e) and by Order of this Court under Fed. R. Evid. 502(d), no disclosure, production, or exchange of Information (as defined below) in connection with the above-captioned matter (the “Litigation”) shall constitute a waiver of attorney-client privilege or of any work product protection in this or any other federal or state proceeding under any circumstances.

2. This Order applies to all documents and electronically stored information (as those terms are used in Fed. R. Civ. P. 34), the information contained therein, and all other information produced, disclosed, or exchanged by the Parties in connection with this Litigation, whether revealed in a document, electronically stored information, deposition, other testimony, discovery response or otherwise (collectively, “Information”). This Order should be interpreted to prevent waiver to the broadest extent possible under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

1 3. This Order is entered pursuant to Federal Rule of Civil Procedure 26(c)(1) and is
2 intended to protect the Parties to the Litigation, to the fullest extent permissible by law, against
3 any waiver of the attorney-client privilege and/or the work product protection that might
4 otherwise arise from the disclosure of privileged or protected Information. This Order is intended
5 to override any contrary law or presumptions, if and as applicable and permissible. The Parties'
6 compliance with this Order's terms shall be understood, for all purposes within and outside this
7 Litigation, to constitute reasonable and prompt efforts to preserve privileges and protections
8 from discovery in respect to any disclosed privileged or protected Information.

9 4. This Order applies regardless of whether the Information describes or relates to
10 actions taken in this Litigation, in prior or separate proceedings, or in other non-litigation
11 matters.

12 5. A party receiving Information ("Receiving Party") is under a good faith
13 obligation to promptly alert the Producing Party if Information that is produced, disclosed,
14 exhibited, or communicated by a Producing Party appears to be privileged or work product-
15 protected either on its face or in light of facts known to the Receiving Party.

16 6. To effectuate a clawback, upon learning of the production of privileged or
17 protected Information, the Party making a production ("Producing Party") shall promptly give all
18 counsel of record written notice of the production. The Producing Party need not provide any
19 explanation or evidence regarding the reasonableness of the efforts taken to prevent production
20 of such Information, and the Receiving Party agrees that it will not challenge the reasonableness
21 of such efforts. The notice shall identify the Information that was produced (including the format
22 of the production—e.g., paper, electronically stored information) and the date(s) the Information
23 was produced. If the Producing Party claims that only a portion of a document, electronically
24 stored information or tangible thing produced is privileged or protected Information, the
25 Producing Party shall also promptly provide a new copy of the Information with the allegedly
26 privileged or protected portions redacted. If the Receiving Party had previously filed documents
with the Court containing newly-identified protected Information or pleadings discussing those

1 documents' contents, then the Parties shall work in good faith to determine whether exhibits
2 must be withdrawn and filed with new redactions.

3 7. Upon receiving notice of a production or upon determining that Information it
4 received is known to be privileged or protected in whole or in part, the Receiving Party must
5 promptly return, sequester, and/or destroy the Information and all copies and destroy any notes
6 that reproduce, copy or otherwise reflect or disclose the substance of the privileged or work
7 product-protected Information. Any such Information that may exist on any computer or back-up
8 media which cannot be reasonably deleted may be retained until such time as the media is
9 subject to routine deletion or destruction provided that no person attempts to access the contents
10 of the Information unless allowed under the terms of this Order. If the Receiving Party disclosed
11 the privileged or work product-protected Information before being notified, it must take
12 reasonable steps to retrieve and prevent further use or distribution of such Information. This duty
13 expires if this Court rules that the Information is not privileged or protected by the work product
14 doctrine.

15 8. If the Receiving Party contests the claim of privilege or work product protection
16 in good-faith, it may within fourteen (14) days of the Producing Party's written notice, seek
17 determination from the Court as to the privileged or protected nature of the Information. Pending
18 such challenge, a Receiving Party may securely retain copies of the document, record, or data
19 and any related notes. Pending a ruling on its challenge, the Receiving Party may not use the
20 protected Information in any way other than prosecuting its challenge.

21 9. To the extent that any Party obtains any privileged Information through disclosure
22 or communications, such Information may not be submitted to the Court or presented for
23 admission into evidence or sought in discovery by that Party in this Litigation or in any other
24 proceeding or action unless such filing is made under seal. If requested by the Receiving Party,
25 the Producing Party shall provide the Information at issue to the Court for *in camera* review
26 unless otherwise ordered by the Court.

1 10. If the Court sustains the claim that the Information disclosed, exchanged,
 2 produced, or discussed is privileged or work product-protected, the Receiving Party must, within
 3 ten (10) days of the Court's order, promptly return and/or destroy the Information and all copies
 4 and destroy any notes that reproduce, copy or otherwise disclose the substance of the privileged
 5 or work product-protected Information. The Receiving Party shall advise the Producing Party in
 6 writing of the return and/or destruction.

7 11. Nothing in this Order shall be construed to limit a party's right to conduct a
 8 review of documents, ESI, or information (including metadata) for relevance and responsiveness
 9 and/or require the production of any Information or communication that a Party contends is
 10 protected from disclosure by the attorney-client privilege and/or the work product doctrine.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

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Attorneys for Defendant

DONE and ORDERED this _17th_ day of _August_, 2020.



Marsha J. Pechman

United States Senior District Judge

CERTIFICATE OF SERVICE (CM/ECF)

I certify that on August 14, 2020 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Daniel R. Whitmore**
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